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Telecommunications Transaction Tax Administration Project—Proposal II, Local
Imposition, State Administration

MTC Work Group Teleconference Meeting
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For Discussion Purposes Only

**I. Scope of State-Level Administration of Local Transaction Taxes on
Communications Services**

The administrative requirements of this chapter shall apply to each type of local transaction tax on communications services within a local taxing jurisdiction. Nothing in this chapter shall be construed to require that the administrative requirements for one type of local transaction tax on communications services be identical to those applicable to any other type of local transaction tax on communications services. To the extent a tax is imposed on any communication service, the base must be uniform among localities. Nothing in this chapter shall be construed to require any local taxing jurisdiction to exempt, or to impose a tax on any communications service, or to adopt any particular type of local transaction tax on communications services, or to impose the same rate of such tax as any other local taxing jurisdiction.

II. Preservation of Local Authority; Cooperation Among Jurisdictions

A. This chapter does not supersede, impair, or grant the right, if any, of a local taxing jurisdiction to impose a local transaction tax on a communications service or exempt any communications service from tax, or require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a seller or purchaser of communications services.

B. The state tax administrator may request from any state agency or local taxing jurisdiction any information that the state tax administrator considers necessary in administering this chapter, and such agency or jurisdiction shall furnish such information.

III. State Level Administration

A. The state tax administrator shall administer and collect all local transaction taxes imposed by every local taxing jurisdiction within this state. As applicable, sellers or purchasers of communications services that are subject to any type of local transaction tax on communications services are only required to register with, file returns with, and remit amounts to the state tax administrator, except to the extent that any provision of this chapter is either inconsistent with or not relevant to a provision of the [local enabling law]. The state tax administrator shall conduct, or authorize others to conduct on its behalf, audits of such sellers and purchasers for the local transaction tax on communications services. Local taxing jurisdictions shall not conduct audits of sellers or purchasers for local transaction taxes on communications services, except as otherwise provided in this chapter.

B. If permitted by state law, the state tax administrator may authorize audits of communications service providers to be conducted or performed by others on behalf of the state tax administrator so long as: (1) the person is conducting the audit for all local taxing jurisdictions within the state; (2) the person is subject to the same confidentiality provisions (and other protections afforded a taxpayer) as a person working for the state tax administrator; (3) the audit does not cover an audit period already conducted by the state tax administrator or other person acting on its behalf, absent fraud or mutual consent; and (4) the audit is subject to the same administrative and appeal procedures granted to audits conducted by the state tax administrator.

C. Audits performed by the state tax administrator may include a determination of the seller's or purchaser's compliance with the jurisdictional siting of the end user's service addresses and a determination of whether the rate collected for the local transaction tax on communications services is correct. However, notwithstanding any other provision of law to the contrary, if the state tax administrator determines that a seller or purchaser of communications services sells or purchases communications services within a single local taxing jurisdiction in this state, that local taxing jurisdiction may perform an audit of such person with respect to the communications services sells or purchases within the local taxing jurisdiction.

IV. Registration

Each person seeking to engage in business as a communications services provider must file with the state tax administrator an application for a certificate of registration. Registration with the state tax administrator under this section constitutes registration with every local taxing jurisdiction in this state that imposes a local transaction tax on communication services; provided that a communications services provider may elect to separately register with any local taxing jurisdiction in this state that imposes such taxes.

V. Returns

A. For each type of local transaction tax on communications services imposed by any local taxing jurisdiction within this state, every seller or purchaser of communications services maintaining a place of business in this state shall, on or before [calendar period], make a return to the state tax administrator, stating:

(i) Its name.

(ii) The address of its principal place of business or the address of the principal place of business (if a different address) from which it engages in the business of providing communications services.

(iii) The total amount of gross charges billed by it during the [calendar period] for providing communications services and upon the basis of which the tax is imposed.

B. The state tax administrator shall:

(i) Require that only a single tax return for each taxing period for each seller or purchaser of communications services be filed for each type of local transaction tax on communications services to include all the taxing jurisdictions within the state.

(ii) Require that such returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

(iii) Make available to all sellers and purchasers of communications services a simplified return that is filed electronically.

C. Where a state contains local taxing jurisdictions that impose a type of local transaction tax on communications services at varying rates, each seller or purchaser of communications services obligated to collect and remit one of the local transaction tax on communications services imposed by a local taxing jurisdiction chapter shall separately report and identify each such tax to the state tax administrator, by jurisdiction, on a form prescribed by the state tax administrator, and shall pay or remit such taxes to the state tax administrator. Where a state contains local taxing jurisdictions that impose a type of local transaction tax on communications services at rates that do not vary and an allocation process applies, the requirements of this paragraph shall not apply.

VI. Rates and Boundary Changes

A. For each local taxing jurisdiction within this state that levies a tax on telecommunications services, the state shall

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum sixty days' notice to the telecommunications provider.

2. Apply local taxing jurisdiction boundary changes only on the first day of a calendar quarter after a minimum sixty days' notice to the telecommunications provider.

B. The state shall

1. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for local telecommunications transaction tax purposes.

2. Provide and maintain a database of all local telecommunications transaction tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format consistent with that maintained by the state revenue agency.

If the state revenue agency does not maintain a database, it shall certify automated systems (CAS) to aid in the administration of local telecommunications transaction taxes. The state may certify a software program as a CAS if it determines that the program meets all of the following requirements:

- i. It determines the applicable local tax rate for a telecommunications transaction;
- ii. It determines whether or not a transaction is exempt from tax;
- iii. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
- iv. It can generate reports and returns as required by the centralized tax administrator; and
- v. It can meet any other requirement set by the centralized tax administrator.

3. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates. The database records must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)).

VII. Allocation and Distribution of Tax

A. The state tax administrator shall provide for the collection of local transaction taxes on communications services and the distribution of such amounts to each appropriate local taxing jurisdiction.

B. Notwithstanding any law to the contrary, the proceeds of all local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions shall be transferred to the Local Transaction Tax Trust Fund and held there to be distributed to such local taxing jurisdiction. The state tax administrator may promulgate rules for the reasonable allocation of local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions. Such local transaction taxes shall not be withheld or reduced by the [state legislature] for any reason, except for adjustments to reimburse the state tax administrator for the costs of administering this chapter.

C. For purposes of this [section], the Local Transaction Tax Trust Fund shall be created and maintained by the state tax administrator. The state tax administrator may promulgate rules for the maintenance of the Local Transaction Tax Trust Fund consistent with state law.

VIII. Reimbursement of Administrative Costs

The state tax administrator shall charge the local taxing jurisdiction for its services in an amount sufficient to reimburse the state tax administrator for the cost to the state tax administrator for rendering its services; provided that the amount charged to local taxing jurisdiction for such services shall not exceed [one percent] of the tax collected. The cost of administration shall be prorated among the local taxing jurisdictions levying a local transaction tax on communications services on the basis of the amount collected for a particular local taxing jurisdiction to the total amount collected for all such jurisdictions.

IX. Authority of State Tax Administrator to Promulgate Rules

A. The state tax administrator may promulgate rules to administer and enforce the assessment and collection of the taxes, interest, and penalties collected under or imposed by a local taxing jurisdiction.

B. The provisions of the state's telecommunications tax laws shall, as far as lawful and practicable, be applicable to the local taxes on communications services imposed by a local taxing jurisdiction and administered under this chapter and to the collection thereof as if fully set out in this chapter. No provision of the state's telecommunications tax laws shall apply if it conflicts with any provision of this chapter.

C. To administer each type of local transaction tax on communications services, the state tax administrator may adopt rules relating to:

(i) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange subject to reasonable exceptions determined by the state tax administrator.

(ii) The determination of customer service addresses, consistent with federal and state law.

(iii) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(iv) The records and methods necessary for a seller and purchaser of communications services to demonstrate the exercise of due diligence.

(v) The registration of sellers and purchasers of communications services.

(vi) The types of books and records kept in the regular course of business which must be available during an audit of a seller's or purchaser's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the state tax administrator in an electronic format when so kept by the seller or purchaser. The seller or purchaser may support any allocation of charges with books and records kept in the regular course of business covering the seller's or purchaser's entire service area, including territories outside this state. During an audit, the state tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

(vii) The procedure for claiming a refund or credit of local transaction tax imposed on communications service by the local taxing jurisdiction.